

Message Text

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USOECD

E.O. 11652: GDS

TAGS: ETRD

SUBJECT: ANTITRUST: ATTORNEY GENERAL'S SPEECH BEFORE THE
AMERICAN BAR ASSOCIATION

1. ATTORNEY GENERAL BELL SPOKE BEFORE THE AMERICAN BAR
ASSOCIATION CONVENTION IN CHICAGO AUGUST 8 ON THE TOPIC OF
COMITY AND ANTITRUST ENFORCEMENT, INCLUDING TAKING INTO
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ACCOUNT THE IMPORTANT NATIONAL INTERESTS OF OTHER CONCERNED
COUNTRIES. SINCE ALL THE ADDRESSEE HOST GOVERNMENTS WERE
MENTIONED IN THE SPEECH, THERE MAY BE LOCAL PRESS COMMENT.

2. FOLLOWING QUOTATIONS ARE MOST LIKELY TO BE CONTROVER-
SIAL ... "WHILE WE TRY TO EXERCISE COMITY IN ENFORCING ANTI-
TRUST LAWS, SOME NATIONS FIND OUR POSITION UNACCEPTABLE.

SEVERAL NATIONS HAVE PASSED LAWS TO PREVENT PERSONS WITHIN THEIR TERRITORY FROM COOPERATING WITH THE UNITED STATES, AND THEY HAVE ESTABLISHED CRIMINAL SANCTIONS FOR THOSE WHO COMPLY WITH U.S. LAW IN VIOLATION OF THESE 'BLOCKING' STATUTES. AMONG THOSE WHICH HAVE ADOPTED AND, FROM TIME TO TIME, IMPLEMENTED SUCH LAWS ARE THE UNITED KINGDOM, THE FEDERAL REPUBLIC OF GERMANY, CANADA, AUSTRALIA, AND THE NETHERLANDS."

3. "COMITY SHOULD WORK BOTH WAYS. WE OWE DEFERENCE TO OTHER NATIONS WHEN THEIR VITAL NATIONAL INTERESTS ARE AT STAKE AND THE CONFLICTING UNITED STATES INTEREST CARRIES A LESSER WEIGHT. BUT OTHER NATIONS OWE US, IN TURN, DEFERENCE AT LEAST TO THE EXTENT OF WORKING TOWARD A COMPROMISE ARRANGEMENT IF OUR FUNDAMENTAL NATIONAL INTERESTS ARE DIRECTLY AFFECTED.

4. "OF COURSE, THERE WILL BE UNAVOIDABLE SITUATIONS WHERE TWO SETS OF INTERESTS CONFLICT, EACH COUNTRY VIEWING ITS OWN AS SUPREME. SUCH SITUATIONS PROVIDE A TEST OF EACH NATION'S SENSE OF COMITY, AND PERHAPS ITS DIPLOMATIC SKILLS AS WELL.

5. "BUT I SEE NO SUCH EXCUSE FOR DELIBERATELY ENACTING 'BLOCKING' LEGISLATION SOLELY TO FRUSTRATE U.S. ANTITRUST LAWS, WITHOUT REGARD TO THE SERIOUSNESS OF THE CASE OR THE LIMITED OFFICIAL USE

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NATIONAL INTEREST AT STAKE. BLANKET PROHIBITIONS BY FOREIGN GOVERNMENTS AGAINST COOPERATION WITH U.S. INVESTIGATIONS, BY THEIR NATIONALS OR EVEN BY U.S. CITIZENS LOCATED IN THEIR TERRITORY, ARE NOT ONLY INCONSISTENT WITH COMITY BUT MAY ALSO HARM THOSE WHO INVOKE PROHIBITIONS. COOPERATING WITH INVESTIGATIONS IS THE BEST WAY OF BRINGING EXCULPATORY INFORMATION TO OUR ATTENTION. COOPERATION BY A FOREIGN FIRM OR GOVERNMENT IS A SIGNIFICANT FACTOR INFLUENCING OUR PROSECUTORIAL JUDGMENT. LET ME MAKE CLEAR TO YOU THAT I DEEM OUR CRIMINAL INVESTIGATION OF THE INTERNATIONAL URANIUM INDUSTRY AND OUR CIVIL INVESTIGATION OF THE INTERNATIONAL OIL INDUSTRY MATTERS OF FUNDAMENTAL U.S. INTEREST. UNQTE.

6. WASHINGTON POST COMMENTED THAT ... "COUNTRIES FACE AMERICAN RETALIATION IF THEY TRY TO BLOCK SUCH PROBES." DEPARTMENT THINKS THAT TERM "RETALIATION" IS UNFORTUNATE SINCE IT BELIES BALANCED APPROACH ATTORNEY GENERAL TOOK TOWARD FOREIGN INTERESTS AND DOES NOT ITSELF APPEAR IN THE TEXT OF THE SPEECH. MOREOVER, POST ARTICLE DID NOT REFLECT THAT PART OF SPEECH WHICH CALLS FOR TAKING INTO ACCOUNT THE IMPORTANCE OF OTHER COUNTRIES.

7. IF POSTS SHOULD BE ASKED TO COMMENT ON ATTORNEY
GENERAL REMARKS THEY MAY SAY THAT SUBJECT OF COMITY IS ONE
OF ACTIVE INTEREST TO THE USG AND HAS BEEN THE TOPIC OF
RECENT BILATERAL CONVERSATIONS WITH SOME OECD MEMBERS. WE
BELIEVE THAT THE ATTORNEY GENERAL'S SPEECH IN CHICAGO
STRIKES A REASONABLE BALANCE BETWEEN U.S. LAW AND ITS
ENFORCEMENT, AND THE SOVEREIGN INTERESTS OF FOREIGN
GOVERNMENTS.

8. COPIES OF THE SPEECH ARE BEING POUCHED TO ALL ADDRESS-
EES. CHRISTOPHER

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